

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
EASTERN WASHINGTON REGION
STATE OF WASHINGTON

NEIGHBORHOOD ALLIANCE OF SPOKANE
COUNTY,

Case No. 14-1-0002

Petitioner,

FINAL DECISION AND ORDER

v.

SPOKANE COUNTY,

Respondent.

I. SYNOPSIS

On July 15, 2014, the Board held a telephonic Hearing on the Merits. The Board finds and concludes Spokane County is not in compliance with the requirements of the Growth Management Act (GMA) relating to Level of Service standards in Capital Facilities Planning and extending or expanding urban governmental services into rural areas.

II. BURDEN OF PROOF AND STANDARD OF REVIEW

For the purposes of Board review of the comprehensive plans and development regulations adopted by local governments, the GMA establishes three major precepts: a presumption of validity; a "clearly erroneous" standard of review; and a requirement of deference to the decisions of local governments.

Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and amendments to them are presumed valid upon adoption:

Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

The statute further provides that the standard of review is whether the challenged

1 Alliance of Spokane County appearing through its attorney Rick Eichstaedt and Respondent
2 appearing through its attorney David Hubert. Rule 9 Intern William Crawford-Heim
3 participated in the oral arguments on behalf of Petitioner Neighborhood Alliance of Spokane
4 County.

6 **IV. BOARD JURISDICTION**

7 To invoke the Board's jurisdiction to review compliance with the GMA, a party with
8 standing must comply with the statute's procedural requirements:

- 9
- 10 a) file a petition for review that includes a detailed statement of issues presented for
11 resolution by the Board;⁵
 - 12 b) file the petition for review within 60 days after publication by the legislative body of
13 the county;⁶ and
 - 14 c) allege that the government agency is not in compliance with the requirements of
15 the GMA.⁷

16 The Board finds and concludes that the Petitioner has standing and complied with
17 the GMA's procedural requirements to invoke the Board's jurisdiction. The Board has
18 jurisdiction to hear and decide the Comprehensive Plan and Development Regulation
19 issues presented for review in this case.

21 **V. CHALLENGED LEGISLATIVE ACTION**

22 Petitioner challenges Spokane County Resolution No. 2014-0004 (Findings of Fact
23 and Decision adopted Jan. 7, 2014) amending Spokane County's Comprehensive Plan and
24 Zoning Code and specifically relating to the Comprehensive Plan Capital Facilities Plan
25 Element and Rural Element.

28 **VI. APPLICABLE LAW**

29 RCW 36.70A.020 provides in pertinent part as follows:

31 ⁵ RCW 36.70A.290(1).

32 ⁶ RCW 36.70A.290(2). In addition to the GMA, the Board also has jurisdiction to hear and determine certain
petitions alleging noncompliance with the Shoreline Management Act and the State Environmental Policy Act.

⁷ RCW 36.70A.280(1)(a).

1 The following goals are adopted to guide the development and adoption of
2 comprehensive plans and development regulations of those counties and
3 cities that are required or choose to plan under RCW 36.70A.040. The
4 following goals are not listed in order of priority and shall be used exclusively
5 for the purpose of guiding the development of comprehensive plans and
6 development regulations:

7 (1) Urban growth. Encourage development in urban areas where
8 adequate public facilities and services exist or can be provided in an efficient
9 manner.

10 (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped
11 land into sprawling, low-density development.

12 (3) Transportation. Encourage efficient multimodal transportation systems
13 that are based on regional priorities and coordinated with county and city
14 comprehensive plans. . . .

15 (8) Natural resource industries. Maintain and enhance natural resource-
16 based industries, including productive timber, agricultural, and fisheries
17 industries. Encourage the conservation of productive forest lands and
18 productive agricultural lands, and discourage incompatible uses. . . .

19 (12) Public facilities and services. Ensure that those public facilities and
20 services necessary to support development shall be adequate to serve the
21 development at the time the development is available for occupancy and use
22 without decreasing current service levels below locally established minimum
23 standards.

24 RCW 36.70A.070 provides in pertinent part as follows:

25 The comprehensive plan of a county or city that is required or chooses to
26 plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive
27 text covering objectives, principles, and standards used to develop the
28 comprehensive plan. The plan shall be an internally consistent document and
29 all elements shall be consistent with the future land use map. . . .

30 Each comprehensive plan shall include a plan, scheme, or design for
31 each of the following:

32 . . .

(3) A capital facilities plan element consisting of: (a) An inventory of
existing capital facilities owned by public entities, showing the locations and
capacities of the capital facilities; (b) a forecast of the future needs for such
capital facilities; (c) the proposed locations and capacities of expanded or
new capital facilities; (d) at least a six-year plan that will finance such capital
facilities within projected funding capacities and clearly identifies sources of
public money for such purposes; and (e) a requirement to reassess the land
use element if probable funding falls short of meeting existing needs and to

1 ensure that the land use element, capital facilities plan element, and
2 financing plan within the capital facilities plan element are coordinated and
3 consistent. Park and recreation facilities shall be included in the capital
4 facilities plan element.

5 . . .

6 (5) Rural element. Counties shall include a rural element including lands
7 that are not designated for urban growth, agriculture, forest, or mineral
8 resources. The following provisions shall apply to the rural element:

9 (a) Growth management act goals and local circumstances. Because
10 circumstances vary from county to county, in establishing patterns of rural
11 densities and uses, a county may consider local circumstances, but shall
12 develop a written record explaining how the rural element harmonizes the
13 planning goals in RCW 36.70A.020 and meets the requirements of this
14 chapter.

15 (b) Rural development. The rural element shall permit rural development,
16 forestry, and agriculture in rural areas. The rural element shall provide for a
17 variety of rural densities, uses, essential public facilities, and rural
18 governmental services needed to serve the permitted densities and uses. To
19 achieve a variety of rural densities and uses, counties may provide for
20 clustering, density transfer, design guidelines, conservation easements, and
21 other innovative techniques that will accommodate appropriate rural densities
22 and uses that are not characterized by urban growth and that are consistent
23 with rural character.

24 RCW 36.70A.110(4) states:

25 In general, cities are the units of local government most appropriate to
26 provide urban governmental services. In general, it is not appropriate that
27 urban governmental services be extended to or expanded in rural areas
28 except in those limited circumstances shown to be necessary to protect basic
29 public health and safety and the environment and when such services are
30 financially supportable at rural densities and do not permit urban
31 development.

32 V. DISCUSSION AND ANALYSIS

Issue 1. Did Spokane County's adoption of Resolution No. 2014-0004 by repealing the numeric level of service standards for "law enforcement" and "parks" and adopting vague narrative statements in Spokane County Comprehensive Plan Chapter 7, Capital Facilities and Utilities, and by repealing Goal PO.3a, Policy PO.3.1, and the narrative preceding the goal violate RCW 36.70A.020(1), RCW 36.70A.020(12), RCW 36.70A.070, RCW 36.70A.070(3), RCW 36.70A.070(8), RCW 36.70A.100, RCW 36.70A.120, RCW

1 **36.70A.130(1)(d), RCW 36.70A.210(1) and .210(3), or the Spokane County**
2 **Countywide Planning Policies including Provision of Urban Services Policy**
3 **1 or Parks and Open Space Policies 1, 2, or 5? See Resolution No. 2014-0004**
4 **Attachment “B” p. CF-6 and pp. PO-3 – PO-4.**

5 **GMA Capital Facilities Planning**

6 Petitioners allege that the Resolution 2014-0004 amendments to Comprehensive
7 Plan Chapter 7, Capital Facilities and Utilities, and Chapter 9, Parks and Open Space,
8 violate the Growth Management Act (GMA), and more particularly allege as follows:
9

10 The County’s prior level of service standards (LOS) for “police protection”
11 and “parks and recreation” could be used to “forecast of the future needs for
12 such capital facilities” and “the proposed locations and capacities of
13 expanded or new capital facilities” RCW 36.70A.070 (3)(b); (c). However
14 the new “LOSs” adopted by Resolution No. 2014-0004 cannot. The law
15 enforcement LOS formerly set a standard of “1.01 officers per 1000/
16 population” and “3.04 jail beds per 1000/population.” Resolution No. 2014-
17 0004 Attachment “B” p. CF-6 attached to the Neighborhood Alliance Petition
18 for Review. These LOSs allowed forecasting both total increases for capital
19 facilities and the needed facilities for various areas based on projected
20 population increases. The new “LOS” is “[p]rovide police and jail services
21 consistent with state and federal regulations and to adequately serve and
22 protect the citizens of Spokane County.” *Id.* It is not possible to make either
23 projection based on this general statement.

24 The parks “LOS” has similar problems. It was formerly “1.4 community park
25 acres per 1000/population.” Resolution No. 2014-0004 Attachment “B” p. CF-
26 6; pp. PO-3-PO-4 (including Goal PO.3a and Policy PO 3.1). The “LOS”
27 adopted by Resolution No. 2014-0004 is now “[a]cquire and develop parks
28 and recreation facilities to meet the needs of the public within available
29 resources.” *Id.* Like the law enforcement “LOS”, the new parks “LOS” cannot
30 be used to forecast parks and recreation capital facilities on any level. Both
31 of the new “LOSs” violate RCW 36.70A.020(12) and RCW 36.70A.070.⁸
32

33 Spokane County’s Response Brief did not specifically respond to Petitioner’s
34 prehearing briefing of the three legal issues in this case. Rather, Spokane County stated
35 that it objects to all of the allegations in the Petition for Review and the Petitioner’s
36 Prehearing Brief and “[w]ithout any concession by Spokane County to the allegations made

⁸ Petitioner’s Prehearing Brief, p. 5 (June 10, 2014).

1 by Petitioner in its Petition for Review or in its Prehearing Brief, Spokane County
2 acknowledges that it is likely that the Growth Management Hearings Board would enter an
3 order of noncompliance on at least one of the issues raised.” The County concluded by
4 proposing either an extension of time for briefing and decision or a remand for action to
5 comply.⁹

6 This Board has held that “[a]ll facilities included in the [capital facilities element] CFE
7 must have a minimum standard (LOS) clearly labeled as such (i.e., not “guidelines” or
8 “criteria”). . . .”¹⁰ The Board has also held that establishing an LOS is an objective way to
9 measure the adequacy of a facility or service, but the GMA does not dictate what is
10 inadequate; the setting of an LOS standard is a policy decision left to the discretion of local
11 elected officials.¹¹

12 WAC 365-196-210 (19) defines Level of Service as follows: “an established minimum
13 capacity of public facilities or services that must be provided per unit of demand or other
14 appropriate measure of need. Level of service standards are synonymous with locally
15 established minimum standards.”

16 The LOS standards adopted by Resolution No. 2014-0004 do not meet this definition
17 or the above standards. For law enforcement the new “LOS” is “[p]rovide police and jail
18 services consistent with state and federal regulations and to adequately serve and protect
19 the citizens of Spokane County.”¹² Spokane County asserted at the Hearing on the Merits
20 that such state and federal regulations exist; however, when asked for citations to those
21 state and federal regulations, the County’s attorney could not provide any citations.
22

23 The former LOS met the definition in WAC 365-196-210 (19) because it established a
24 minimum capacity per unit of demand, in that case per 1,000 people. The LOS adopted by
25 Resolution No. 2014-0004 does not establish a minimum capacity, i. e., how many officers
26 are required to adequately serve and protect the citizens of Spokane County? It is also does
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30 ⁹ Respondent’s Response to Petitioner’s Opening Brief, pp. 3-4 (filed June 25, 2014).

31 ¹⁰ *Wilma v. Stevens County*, EWGMHB Case No. 06-1-0009c, Final Decision and Order (March 12, 2007), at
22-23.

32 ¹¹ *Larson Beach Neighbors and Wagenman v. Stevens County*, EWGMHB Case 07-1-0013, Final Decision
and Order (Oct. 6, 2008), at 28 (footnote omitted).

¹² Resolution No. 2014-0004 Attachment “B,” p. CF-6.

1 not require that capacity “must be provided per unit of demand or appropriate measure of
2 need.” The new LOS is not equated to a unit of demand or measure of need.

3 The Parks LOS adopted by Resolution No. 2014-0004 now states “[a]cquire and
4 develop parks and recreation facilities to meet the needs of the public within available
5 resources.”¹³ The former LOS met the definition in WAC 365-196-210(19) because it
6 established a minimum capacity per unit of demand, in that case a thousand people. The
7 LOS adopted by Resolution No. 2014-0004 does not establish a minimum capacity, i.e.,
8 how many parks and recreation facilities are needed to meet the needs of the public? The
9 new LOS provides no guidance. It also does not require that capacity “must be provided per
10 unit of demand or appropriate measure of need.” The new LOS is not equated to a unit of
11 demand or measure of need and contains the further qualification that the parks and
12 recreation facilities must be within the available resources. So even if the needed facilities
13 could be determined by the LOS, if they are judged to be outside the available resources
14 they need not be planned for or provided.
15

16
17 Further, RCW 36.70A.070(3)(e) provides that the capital facilities plan element must
18 include “a requirement to reassess the land use element if probable funding falls short of
19 meeting existing needs and to ensure that the land use element, capital facilities plan
20 element, and financing plan within the capital facilities plan element are coordinated and
21 consistent.” The GMA requires a reassessment of the land use element if the needed parks
22 cannot be constructed, not a choice to not acquire the parks.
23

24 WAC 365-196-440(2)(c)(iii) provides that park “[l]evel of service standards should
25 focus on those aspects that relate most directly to factors influenced by growth and
26 development, to allow for counties and cities to more clearly identify the impact on the
27 demand for park facilities resulting from new development.” The new park LOS does not
28 allow the county to clearly identify the impact on demand for park facilities from new
29 development.
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¹³ Resolution No. 2014-0004 Attachment “B,” p. CF-6; pp. PO-3-PO-4.

1 Spokane County's concurrency regulations, in Spokane County Code (SCC) § 13.
2 650.102,¹⁴ have identified both law enforcement and parks and recreation as necessary to
3 support development. For capital facilities that are necessary for development, WAC 365-
4 196-415(5)(b)(iii) states in pertinent part:

5 [C]ounties and cities should set a minimum level of service standard, or
6 provide some other objective basis for assessing the need for new facilities
7 or capacity. This standard must be indicated as the baseline standard, below
8 which the jurisdiction will not allow service to fall. Policies must require
9 periodic analysis to determine if the adopted level of service is being met
10 consistent with this section.

11 But the new LOS standards adopted by Resolution No. 2014-0004 do not indicate
12 they are a "baseline standard" "below which the jurisdiction will not allow service to fall."¹⁵ In
13 fact, the LOS standards are so general you cannot ascertain the baseline.

14 The *Spokane County Comprehensive Plan* provides:

15 **Levels of Service (LOS)**

16 Levels of service standards are usually quantifiable measures of the amount
17 of public facilities or services that are provided to the community. Levels of
18 service may also measure the quality of some public facilities. Typically,
19 measures of levels of service are expressed as ratios of facility or service
20 capacity to demand (i.e., actual or potential users). For example, the level of
21 service for parks may be expressed as acres of parks for every 1,000 people.
22 Levels of service standards are measures of the quality of life of Spokane
23 County. The standards should be based on the community's vision of its
24 future and its values.¹⁶

25 Counsel for Spokane County alleged at oral argument that this comprehensive plan
26 language is permissive, not prescriptive. This language does, however, provide a framework
27 for measuring the quality of public facilities in Spokane County.

28 For law enforcement the new LOS is "[p]rovide police and jail services consistent with
29 state and federal regulations and to adequately serve and protect the citizens of Spokane
30
31

32 ¹⁴ Enclosed in Tab 2014-0093 attached to Petitioner's Prehearing Brief.

¹⁵ Resolution No. 2014-0004 Attachment "B," p. CF-6; pp. PO-3-PO-4.

¹⁶ *Id.* at p. CF-4.

1 County.”¹⁷ This LOS is neither a quantifiable measure nor does it measure the quality of law
2 enforcement service.

3 Similarly, the new parks LOS, which states “[a]cquire and develop parks and
4 recreation facilities to meet the needs of the public within available resources,” is neither a
5 quantifiable measure nor does it measure the quality of parks.¹⁸ The LOS standards are not
6 compatible with the definition of LOS in the comprehensive plan. More significantly, the new
7 law enforcement and parks LOS standards are not compliant with the GMA’s goals and
8 requirements to show the capacities of existing Capital Facilities and the future needs and
9 capacities of expanded or new Capital Facilities.
10

11 **Countywide Planning Policies**

12
13 Countywide planning policies are binding on the County.¹⁹ The Countywide Planning
14 Policies (CPPs) require the County to include in its Comprehensive Plan Level of Service
15 standards for “police protection” and “parks and recreation.”²⁰ The term “Level of Service” is
16 defined in the Countywide Planning Policies as “an established minimum capacity of public
17 facilities or services that must be provided per unit of demand or other appropriate measure
18 of need.”²¹ The County must specify a level of police protection that addresses the safety of
19 its citizens.²²
20

21 The law enforcement LOS formerly set as a standard “1.01 officers per 1000/
22 population” and “3.04 jail beds per 1000/population.”²³ The new “LOS” is to “[p]rovide police
23 and jail services consistent with state and federal regulations and to adequately serve and
24 protect the citizens of Spokane County.”
25

26 The Spokane County Sheriff wrote to express great concern about the change in
27 level of law enforcement service:
28

29 ¹⁷ Resolution No. 2014-0004 Attachment “B” p. CF-6.

30 ¹⁸ Resolution No. 2014-0004 Attachment “B” p. CF-6; pp. PO-3-PO-4.

31 ¹⁹ *King County v. Central Puget Sound Growth Management Hearings Bd.*, 138 Wn.2d 161, 175-76, 979 P.2d
32 374, 380 (1999).

²⁰ *Countywide Planning Policies for Spokane County*, p. 20 (2008 Printing).

²¹ *Id.* at p. 47.

²² *Id.* at p. 20.

²³ Resolution No. 2014-0004 Attachment “B” p. CF-6 attached to the Neighborhood Alliance Petition for Review.

1 Since 2006, the level of law enforcement coverage has fallen to .73
2 deputies/1000 population in the unincorporated areas of Spokane County.
3 This level of coverage has created a real Public Safety risk to the citizens of
4 our County. My concern is that the new wording does nothing to establish a
5 minimum level of law enforcement coverage for Spokane County. At worse, it
6 could be used to justify the unsafe levels of law enforcement coverage that
7 our citizens are currently at risk from. At best, it sounds good in that it
8 mentions police services consistent with federal and state regulations.
9 Knowing that the State and Federal Government have not created any such
10 regulations, the wording creates a hollow expectation of adequate
11 coverage.²⁴

12 The former LOS established a minimum capacity per unit of demand, in that case a
13 thousand people. The LOS adopted by Resolution No. 2014-0004 does not establish a
14 minimum capacity, and does not provide any methodology for determining how many
15 officers are required to “adequately serve and protect the citizens of Spokane County.” The
16 new LOS is not equated to a unit of demand or measure of need, as required by the
17 Countywide Planning Policies.

18 The Parks LOS was formerly “1.4 community park acres per 1000/population.”²⁵ The
19 LOS adopted by Resolution No. 2014-0004 is now “[a]cquire and develop parks and
20 recreation facilities to meet the needs of the public within available resources.” The former
21 LOS established a minimum capacity per unit of demand, i.e., per thousand people. The
22 LOS adopted by Resolution No. 2014-0004 does not establish a minimum capacity, and
23 does not provide any methodology for determining how many parks and recreation facilities
24 are needed “to meet the needs of the public within available resources.” The new LOS is not
25 equated to a unit of demand or measure of need and includes the further qualification that
26 the parks and recreation facilities must be within the available resources.

27 The amended Level of Service Standards for police and parks do not satisfy the
28 Countywide Planning Policy definition of Level of Service and do not provide the minimum
29 capacity of public facilities and services specified by the Countywide Planning Policies. The
30
31

32 ²⁴ Index of Record Doc # 23, 13-CPA-03 Letter from Sheriff Ozzie Knezovich (Oct. 15, 2013) pp. 000108-17 in
Tab 23 of Petitioner's Prehearing Brief (June 10, 2014).

²⁵ Resolution No. 2014-0004 Attachment “B,” p. CF-6; pp. PO-3-PO-4.

1 amended Level of Service Standards for police and parks also fail to comply with the Capital
2 Facilities planning requirements of RCW 36.70A.070(3) and were not guided by GMA
3 Planning Goal 12 in RCW 36.70A.020(12). The Board is left with a firm and definite
4 conviction that a mistake has been made. The Board finds and concludes that Resolution
5 No. 2014-0004 is clearly erroneous in view of the entire record before the Board and in light
6 of the goals and requirements of the Growth Management Act.
7

8 **Issue 2. Did Spokane County's adoption of Resolution No. 2014-0004 by repealing**
9 **Policy CF.2.2's requirement for annual updates to the Capital Facilities**
10 **Element and the County's Six-Year Capital Improvements and**
11 **Transportation Improvement programs violate RCW 36.70A.020(1), RCW**
12 **36.70A.020(3), RCW 36.70A.020(12), RCW 36.70A.070, RCW 36.70A.070(1),**
13 **RCW 36.70A.070(3), RCW 36.70A.070(6), RCW 36.70A.070(8), RCW**
14 **36.70A.100, RCW 36.70A.120, RCW 36.70A.130(1)(d), RCW 36.70A.210(1) and**
15 **.210(3), the Spokane County Countywide Planning Policies including**
16 **Provision of Urban Services Policy 1, or Spokane County Code (SCC)**
17 **13.650.102? See Resolution No. 2014-0004 Attachment "B" pp. CF-6 – CF-7.**

18 Petitioner alleges that the challenged Resolution No. 2014-0004 violates the GMA's
19 public facilities and services goal in RCW 36.70A.020(12), which provides "[e]nsure that
20 those public facilities and services necessary to support development shall be adequate to
21 serve the development at the time the development is available for occupancy and use
22 without decreasing current service levels below locally established minimum standards."
23 Petitioner states the Growth Management Hearings Board in older cases has read this goal
24 to require that public facilities and services must be available to serve development as that
25 development occurs.

26 According to Petitioner, *Spokane County Comprehensive Plan* Policy CF.2.2 formerly
27 required an annual update to the Capital Facilities Element, the County's Six-Year Capital
28 Improvement Plan, and the Transportation Improvement Plan but Resolution No. 2014-0004
29 repealed the requirement for annual updates.²⁶ WAC 365-196-415 (2)(c)(ii) recommends
30 biennial updates of the capital facility element's financial plan. Spokane County has
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²⁶ Resolution No. 2014-0004 Attachment "B," pp. CF-6 – CF-7 attached to the Neighborhood Alliance Petition for Review.

1 amended SCC § 13.650.102(c) so that in the place of annual updates, the “CFP will be
2 updated consistent with the update schedule required by the Growth Management Act,
3 RCW 36.70A.”²⁷

4 Petitioner asserts this change violates GMA Planning Goal 12 in RCW 36.70A.020
5 (12) because it will mean that eight years of comprehensive plan amendments and
6 developments will be approved before the county determines whether there is adequate fire
7 protection, police protection, parks and recreation facilities, libraries, solid waste disposal
8 facilities, and schools. Counsel for Spokane County alleged at oral argument that six years
9 is the minimum planning horizon under the GMA. The Board finds Petitioner has failed to
10 demonstrate how the challenged repeal of annual updates violates Planning Goal 12 to
11 ensure that those public facilities and services necessary to support development shall be
12 adequate to serve the development at the time the development is available for occupancy
13 and use without decreasing current service levels below locally established minimum
14 standards.
15

16
17 Petitioner also alleges a violation of GMA Planning Goal 3 in RCW 36.70A.020(3)
18 which “[e]ncourage[s] efficient multimodal transportation systems that are based on regional
19 priorities and coordinated with county and city comprehensive plans.” In Petitioner’s view,
20 since transportation plans will only be updated every eight years, the transportation plans
21 and facilities will not be coordinated with the annual updates to the comprehensive plan
22 approved by the county each year.
23

24 Petitioner states a second problem is that periodic updates happen every eight years,
25 but capital facility financing plans only have to plan for six years, so there will be two year
26 gaps where no capital facility financial planning has been done and the county has no
27 financial plan for providing public facilities and services for the newly approved development
28 not envisioned in the comprehensive plan adopted at the last periodic update, such as those
29 developments authorized by annual comprehensive plan. But the Board finds that Petitioner
30 failed to satisfy their burden of proof to show that Resolution No. 2014-0004 violates GMA
31 Planning Goal 3.
32

²⁷ Spokane County Resolution 2014-0093 Attachment A, p. 2.

1 Petitioner further asserts Resolution No. 2014-0004 violates Countywide Planning
2 Policies for Spokane County. CPP Provision of Urban Services Policy 1 provides in relevant
3 part that “[e]ach jurisdiction shall include policies in its comprehensive plan to address how
4 urban development will be managed to promote efficiency in the use of land and the
5 provision of urban governmental services and public facilities.”²⁸

6
7 Petitioner alleges *Spokane County Comprehensive Plan* Policy CF.2.2 formerly
8 required management of the availability of adequate urban governmental services and
9 public facilities through annual updates to the capital facility plan and with the amendment to
10 Policy CF.2.2, Spokane County can go eight years without determining if adequate public
11 facilities and services are available for the indirect concurrency services including fire
12 protection, police protection, parks and recreation, libraries, solid waste disposal and
13 schools.²⁹ According to Petitioner, Policy CF.2.2 as amended by Resolution No. 2014-0004
14 violates the *Countywide Planning Policies for Spokane County* and the GMA. However, the
15 Board finds and concludes Petitioner failed to satisfy their burden of proof to demonstrate
16 that the change from annual to less frequent capital facilities plan updates fails to promote
17 efficiency in the use of land and the provision of urban governmental services and public
18 facilities.
19

20 Under Legal Issue 2 relating to the frequency of capital facilities plan updates, the
21 Board finds and concludes Petitioner failed to satisfy its burden of proof to demonstrate that
22 challenged Resolution No. 2014-0004 is not in compliance with the goals and requirements
23 of the Growth Management Act.
24

25
26 ***Issue 3. Did Spokane County’s adoption of Resolution No. 2014-0004 by repealing***
27 ***Policy CF.3.4’s six year limitation on the extension of public facility capacity***
28 ***to development approvals that vested before the adoption of the Spokane***
29 ***County Comprehensive Plan violate RCW 36.70A.020(1), RCW 36.70A.020(2),***
30 ***RCW 36.70A.020(8), RCW 36.70A.070, RCW 36.70A.070(1), RCW***
31 ***36.70A.070(5), RCW 36.70A.100, RCW 36.70A.110, RCW 36.70A.120, RCW***
36.70A.130(1)(d), RCW 36.70A.210(1) and .210(3), or the Spokane County

32 ²⁸ *Countywide Planning Policies for Spokane County*, p. 18 (2008 Printing), cited pages in Tab CPP attached to Petitioner’s Prehearing Brief.

²⁹ SCC § 13.650.102(c); Resolution No. 2014-0004 Attachment “B,” pp. CF-6 – CF-7.

Countywide Planning Policies including Urban Growth Areas Policies 1, 13, 14, or 15?" See Resolution No. 2014-0004 Attachment "B" p. CF-7.

RCW 36.70A.130(1)(d) provides in relevant part that "[a]ny amendment of or revision to a comprehensive land use plan shall conform to this chapter." A county's comprehensive plan must contain "a rural element including lands that are not designated for urban growth."³⁰ In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.³¹ CPP Urban Growth Area Policy 1 provides in relevant part that "Urban Growth Areas (UGAs) are areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature."³² CPP Urban Growth Area Policy 15 provides that "[e]xtension of urban governmental services outside of Urban Growth Areas (UGAs) should only be provided to maintain existing levels of service in existing urban like areas or for health and safety reasons, provided that such extensions are not an inducement to growth."

The Supreme Court has held that extensions or expansions may be allowed if all of the following criteria are met:

- (1) Cities are the most appropriate providers of urban governmental services;
- (2) It is generally not appropriate to extend or expand urban governmental services into rural areas;
- (3) Limited occasions to extend or expand are allowed that are:
- (4) Shown to be necessary to protect:
 - (a) basic public health and safety *and*
 - (b) the environment, but;
- (5) Only when the urban governmental services are financially supportable at rural densities; and
- (6) Only when extension or expansion does not allow urban development.³³

³⁰ RCW 36.70A.070(5)(d); see WAC 365-196-425. *Kittitas County v. Kittitas County Conservation Coalition*, 176 Wn. App. 38, 57 (2013).

³¹ RCW 36.70A.110(4).

³² *Countywide Planning Policies for Spokane County*, p. 7 (2008 Printing), cited pages in Tab CPP to Petitioner's Prehearing Brief.

³³ *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 434, 31 P.3d 28, 33-34 (2001).

1 Policy CF.3.4, as amended by Resolution No. 2014-0004, does not satisfy these criteria and
2 limitations on the extension or expansion of urban services outside urban growth areas.

3 GMA Planning Goal 1, in RCW 36.70A.020(1), calls on Spokane County to
4 “[e]ncourage development in urban areas where adequate public facilities and services exist
5 or can be provided in an efficient manner.” *Spokane County Comprehensive Plan* Policy
6 CF.3.4 formerly read “[p]rovide public facility capacity, if available, for vested development
7 approvals and vested preliminary plats, which were issued prior to the adoption of this
8 Comprehensive Plan for a period of five years plus one (one year) extension.” Resolution
9 No. 2014-0004 amended this policy by deleting “for a period of five years plus one (one
10 year) extension.”³⁴ Since developments that are consistent with the Spokane County
11 Comprehensive Plan can proceed without relying on vested rights, this amendment has the
12 effect of allowing extension of urban public facilities for developments inconsistent with the
13 comprehensive plan, with no time limit. For example, Policy CF.3.4, as amended by
14 Resolution No. 2014-0004, now allows the extension of urban public facilities to
15 development in the rural area and on natural resource lands that are not allowed by the
16 *Spokane County Comprehensive Plan*.

17
18
19 Petitioner also asserts that development of the policy was not guided by GMA
20 Planning Goal 8 in RCW 36.70A.020(8), since it allows the extension of urban public
21 facilities onto agricultural land, forest land, and mineral resource lands of long-term
22 commercial significance, contrary to the goal to “[m]aintain and enhance natural resource-
23 based industries, including productive timber, agricultural, and fisheries industries.
24 Encourage the conservation of productive forest lands and productive agricultural lands,
25 and discourage incompatible uses.”

26
27 The GMA requires that the comprehensive “plan shall be an internally consistent
28 document and all elements shall be consistent with the future land use map.”³⁵ Consistency
29 means comprehensive plan provisions are compatible with each other. One provision may
30
31

32 ³⁴ Resolution No. 2014-0004 Attachment “B,” p. CF-7 attached to the Neighborhood Alliance Petition for Review.

³⁵ RCW 36.70A.070.

1 not thwart another.”³⁶ Policy CF.3.4, as amended by Resolution No. 2014-0004, now allows
2 the extension and connection of urban public facilities to developments in the rural area and
3 on natural resource lands that are not allowed by the *Spokane County Comprehensive*
4 *Plan*. Petitioner alleges that this creates an inconsistency with the Comprehensive Plan.

5 The Board is left with a firm and definite conviction that a mistake has been made.
6 The Board finds and concludes Policy CF.3.4, as amended by Resolution No. 2014-0004,
7 violates RCW 36.70A.110(4) and is contrary to Countywide Planning Policies 1 and 15. The
8 development of Resolution No. 2014-0004 was not guided by the GMA Planning Goals in
9 RCW 36.70A.020(1) and .020(12). The Board finds and concludes that Resolution No.
10 2014-0004 is clearly erroneous in view of the entire record before the Board and in light of
11 the goals and requirements of the Growth Management Act.
12

13
14 **INVALIDITY:**

15 Petitioners request that the Board make a Determination of Invalidity for the
16 challenged amendments in Resolution No. 2014-0004.

17 Under RCW 36.70A.302(1), the Board may determine that part or all of a
18 comprehensive plan or development regulations are invalid if the Board:
19

- 20 (a) Makes a finding of noncompliance and issues an order of remand under
21 RCW 36.70A.300;
22 (b) Includes in the final order a determination, supported by findings of fact
23 and conclusions of law, that the continued validity of part or parts of the plan
24 or regulation would substantially interfere with the fulfillment of the goals of
25 this chapter; and
26 (c) Specifies in the final order the particular part or parts of the plan or
27 regulation that are determined to be invalid, and the reasons for their
28 invalidity.

29 A Determination of Invalidity can only be issued if the Board finds Spokane County’s
30 adoption of the amendments in Resolution No. 2014-0004 fails to comply with the GMA and
31 that its continued validity would substantially interfere with the fulfillment of the GMA’s goals.
32 GMA Planning Goals 1 and 12 in RCW 36.70A.020 are stated as follows:

³⁶ *City of Spokane v. Spokane County*, EWGMHB Case No. 02-1-0001, Final Decision and Order (July 3, 2002), at 32.

1 (1) Urban growth. Encourage development in urban areas where adequate
2 public facilities and services exist or can be provided in an efficient manner.
3 (12) Public facilities and services. Ensure that those public facilities and
4 services necessary to support development shall be adequate to serve the
5 development at the time the development is available for occupancy and use
6 without decreasing current service levels below locally established minimum
7 standards.

8 The Board has determined that Spokane County failed to comply with the GMA and
9 has remanded this matter to the County to achieve compliance under RCW 36.70A.070(3),
10 RCW 36.70A.110(4), RCW 36.70A.020, and the Countywide Planning Policies.

11 As to the amended Level of Service Standards for police and parks, the Board finds
12 that Petitioners have failed to identify particular parts of the plan or regulations that should
13 be found invalid and that substantially interfere with fulfillment of the goals of the GMA. As
14 to the Capital Facilities Plan update schedule in particular, Petitioners have failed to show
15 how invalidity would prevent substantial interference with fulfillment of specific GMA goals.
16 Accordingly, the Board declines to issue a Determination of Invalidity as to the Capital
17 Facilities Plan update schedule at this time.

18 As to the amendments to *Spokane County Comprehensive Plan* Policy CF.3.4, which
19 deleted the six-year time limit on providing public facility capacity, Petitioner has
20 demonstrated that this specific amendment in Resolution No. 2014-0004 would substantially
21 interfere with the fulfillment of the GMA Planning Goals 1 and 12 because it would allow the
22 extension and connection of urban public facilities to developments in the rural area and on
23 natural resource lands.

24 The Board hereby makes the following Invalidity Findings of Fact and/or Conclusions
25 of Law:

26 1. Adoption of the amendments to *Spokane County Comprehensive Plan*
27 Policy CF.3.4, which deleted the six-year time limit on providing public facility
28 capacity, in Resolution No. 2014-0004 fails to comply with the Growth
29 Management Act.

30 2. There is evidence in the record indicating a risk for project vesting in this
31 case, which would render GMA planning procedures as ineffectual and moot
32 -- if such project vesting was to occur, then the remand of this case to the

1 County would be meaningless and there would be no practical way to
2 address GMA compliance.

3 3. The amendments to *Spokane County Comprehensive Plan* Policy CF.3.4,
4 which deleted the six-year time limit on providing public facility capacity,
5 would substantially interfere with the fulfillment of the GMA Planning Goals 1
6 and 12 because it would allow the extension and connection of urban public
7 facilities to developments in the rural area and on natural resource lands.

8 4. The Board enters a Determination of Invalidity limited to the
9 Comprehensive Plan Amendments to *Spokane County Comprehensive Plan*
10 Policy CF.3.4, which deleted the six-year time limit on providing public facility
11 capacity and which were enacted by Resolution No. 2014-0004.

12 VI. ORDER

13 Based on the foregoing, the Board finds and concludes that Spokane County's
14 adoption of Resolution No. 2014-0004 failed to comply with RCW 36.70A.070(3), RCW
15 36.70A.110(4), and the Countywide Planning Policies and further, Resolution No. 2014-
16 0004 was not guided by the GMA Planning Goals in RCW 36.70A.020(1) and RCW
17 36.70A.020(12). Spokane County's enactment of Resolution No. 2014-0004 was clearly
18 erroneous in view of the entire record before the Board and in light of the goals and
19 requirements of the GMA. The Board enters a Determination of Invalidity limited to the
20 Comprehensive Plan Amendments to *Spokane County Comprehensive Plan* Policy CF.3.4,
21 which deleted the six-year time limit on providing public facility capacity and which were
22 enacted by Resolution No. 2014-0004. Resolution No. 2014-0004 is remanded to Spokane
23 County, and the County shall take further actions to come into compliance with the Growth
24 Management Act consistent with this Final Decision and Order.

25 The following schedule for compliance, briefing and hearing shall apply:
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Item	Date Due
Compliance Due	March 19, 2015
Compliance Report and Index to Compliance Record	April 6, 2015
Objections to a Finding of Compliance	April 20, 2015
Response to Objections	May 29, 2015
Compliance Hearing - Telephonic Call 1-800-704-9804 and use pin 5721566#	June 9, 2015 10:00 a.m.

Entered this 23rd day of September, 2014.

Raymond L. Paoella, Board Member

Chuck Mosher, Board Member

Cheryl Pflug, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.³⁷

³⁷ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.